

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NORTH CAROLINA
WESTERN DIVISION

NO.: 5:17-CV-534-H

EPIC GAMES, INC.

Plaintiff,

v.

C.R.,

Defendant.

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ORDER

This matter is before the court on plaintiff's motion for default judgment [DE #25] in this matter.

BACKGROUND

Plaintiff filed a complaint in this matter on October 23, 2017. On October 27, 2017, the clerk's office issued a summons to defendant C.R. It appears that at the time of filing of the complaint and issuance of the summons, plaintiff was unaware defendant C.R. was a minor. On November 15, 2017, the court received a letter from Lauren A. Rogers, purportedly C.R.'s mother, in which she asked the court to dismiss the complaint against C.R. This letter was received prior to service of the summons and complaint upon Ms. Rogers.

Upon realizing defendant C.R. was a minor, plaintiff sought an amended summons to effect proper service. As detailed in its motion for entry of default and declaration of service, plaintiff effectuated proper service. Plaintiff then asked the court to enter default for failure of defendant to answer or otherwise respond. This court found that while it is true that defendant had not responded since proper service was effectuated, the letter from defendant's mother [DE #6] detailing why this matter should be dismissed could not be ignored. Therefore, the court construed the letter [DE #6] as a motion to dismiss and denied without prejudice defendant's motion for entry of default. The court subsequently denied the letter it construed as a motion to dismiss. The court notes no further filings or letters have been received from defendant or his guardian.

On August 19, 2018, plaintiff filed a motion for entry of default. Default was entered by the clerk on September 11, 2018.

Subsequently, plaintiff filed the motion for default judgment which is now before the court. In reviewing this matter, it came to the court's attention that the order of default [DE #24] incorrectly identifies defendant's mother as Christine Broom instead of Lauren Rogers. Therefore, the court finds default has not been properly entered. Therefore, the court hereby STRIKES the order of default previously entered and directs the clerk to

enter default against defendant and list Lauren Rogers as his mother in the order of default. The clerk is further directed to serve the new entry of default on defendant c/o Lauren Rogers at the following addresses: C.R. c/o of Lauren Rogers, 5 Vireo Circle, Newark, DE 19711 and C.R. c/o Lauren Rogers, 501 West Ave., New Castle, DE 19720.

Turning to the issue of default judgment, the court notes "a default judgment may be entered against a minor or incompetent person only if represented by a general guardian, conservator, or other like fiduciary who has appeared." Fed. R. Civ. P. 55(b)(2). While plaintiff asserts that defendant appeared through his mother in the letter that this court deemed a motion to dismiss, the court, in a footnote to the order denying the motion to dismiss [DE #22] specifically acknowledged "that although it has construed the letter, in an abundance of caution, as a motion to dismiss, there has been no official appearance by anyone on behalf of the minor defendant." Furthermore, there has been no additional filing or appearance by anyone on behalf of defendant.

In light of the circumstances herein, based on the facts currently before the court, and pursuant to Rule 55 of the Federal Rules of Civil Procedure, the court must deny plaintiff's motion for default judgment.

CONCLUSION

For the foregoing reasons, the court hereby STRIKES the order of default previously entered and directs the clerk to re-enter default as detailed above. The motion for default judgment [DE #25] is hereby DENIED.

This 13th day of August 2019.



Malcolm J. Howard
Senior United States District Judge

At Greenville, NC
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